



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 52

[EPA-R09-OAR-2011-0544; FRL-9633-3]

**Approval and Promulgation of Implementations Plans; California
Air Resources Board - In-Use Heavy-Duty Diesel-Fueled Truck and
Bus Regulation, and Drayage Truck Regulation**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the California State Implementation Plan (SIP) submitted by the California Air Resources Board (CARB or Board). This revision concerns two regulations that reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NO_x), and other pollutants from in-use, heavy-duty diesel-fueled trucks and buses, and drayage trucks. EPA is approving this SIP revision because the Agency has determined that the regulations are consistent with the relevant Clean Air Act requirements, policies and guidance. Final approval of the two regulations and incorporation of them into the California SIP makes them federally enforceable.

DATES: *Effective Date:* This rule is effective on [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: EPA has established docket number EPA-R09-OAR-2011-0544 for this action. The index to the docket is available

electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, EPA Region IX, (415) 947-4150, johnson.roxanne@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. EPA's Proposed Action

On July 11, 2011 (76 FR 40652), EPA proposed to approve title 13, California Code of Regulations (CCR), section 2025 ("Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use

Heavy-Duty Diesel-Fueled Vehicles") (referred to herein as the California Air Resources Board's (CARB's) "Truck and Bus Regulation" and 13 CCR section 2027 ("In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks") (referred to herein as CARB's "Drayage Truck Regulation") as revisions to the California State Implementation Plan (SIP). We proposed to approve CARB's regulations under section 110(k)(3) of the Clean Air Act (CAA or "Act"). In today's action, EPA is taking final action to approve CARB's Truck and Bus Regulation and Drayage Truck Regulation.

EPA proposed to approve the Truck and Bus Regulation and Drayage Truck Regulation based on the versions of the amended regulations released for public comment on May 19, 2011 and submitted by CARB to EPA in connection with a request to "parallel process" the regulations for SIP approval purposes. Our July 11, 2011 proposed rule provides detailed information on the State's procedural steps culminating in the public release of the proposed Truck and Bus Regulation and Drayage Truck Regulation that formed the basis for EPA's proposed approval, on the amendments to the original versions of the Truck and Bus Regulation and Drayage Truck Regulation (which had been originally adopted by CARB in December 2008 and December 2007, respectively), and on EPA's "parallel process" procedure used to evaluate and propose action on proposed SIP revisions prior to final adoption and submittal to EPA. The reader is directed to

the July 11, 2011 proposed rule for this detailed information. See 76 FR at 40653-40654.

The regulations were developed by CARB to reduce NO_x, and PM emissions from in-use, heavy-duty diesel-fueled trucks and buses and to meet CAA requirements. NO_x and volatile organic compounds (VOC) are precursors responsible for the formation of ozone; and NO_x, VOC, ammonia, and sulfur dioxide are precursors for fine particulate matter (PM_{2.5}). At elevated levels, ozone and PM_{2.5} harm human health and the environment by contributing to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. California has a number of nonattainment areas for the National Ambient Air Quality Standards (NAAQS) for ozone and PM_{2.5}, and the CAA requires states to submit SIP revisions that ensure reasonable further progress (RFP) and that demonstrate attainment of the NAAQS within such areas. See, *generally*, part D of title I of the CAA. Reductions from the two regulations play a critical role in assuring that areas such as the South Coast Air Basin (which includes the Los Angeles metropolitan area and Orange County) and the San Joaquin Valley meet the NAAQS for ozone and PM_{2.5}.¹

¹ Recently, EPA concurred with the State's determinations that sulfur dioxide, NO_x and VOC are significant PM_{2.5} precursors for attainment planning purposes in the South Coast [76 FR 69928, at 69952 (Nov. 9, 2011)], and that sulfur

Truck and Bus Regulation

CARB's Truck and Bus Regulation (i.e., 13 CCR section 2025) requires fleet² owners to upgrade their vehicles to meet specific performance standards for NO_x and PM. The regulation applies to diesel-fueled trucks and buses that are privately owned, federally owned, and to publicly and privately owned school buses, that have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds (lbs). (Local and state government owned diesel-fueled trucks are already subject to other CARB regulations.) Nearly all of the vehicles affected by the regulation are on-road vehicles, but the regulation also applies to yard trucks with off-road engines used for agricultural operations and two-engine street sweepers with such engines. The regulation exempts certain categories of trucks and buses, many of which, such as solid waste collection vehicles, are subject to different CARB regulations. See 13 CCR section 2025(c).

Key concepts used in the Truck and Bus Regulation include "2010 Model Year (MY) Emissions Equivalent Engine," "PM Best Available Control Technology" (BACT), and "Verified Diesel Emission Control Strategy" (VDECS). These concepts are described

dioxide and NO_x are significant PM_{2.5} precursors for attainment planning purposes in San Joaquin Valley [76 FR 69896, at 69924 (Nov. 9, 2011)].

² In CARB's Truck and Bus Regulation, "fleet" is defined as one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to the regulation. See 13 CCR section 2025(d)(28).

in detail in our July 11, 2011 proposed rule on pages 40654 and 40655 and the reader is directed there for more information on these concepts.

As described in our July 11, 2011 proposed rule, the basic requirements of the regulation are set forth in subsections (e), (f), and (g) of the regulation. Under these subsections, different sets of requirements are established for subject vehicles with a GVWR of 26,000 lbs or less [subsection (f)] and subject vehicles with a GVWR greater than 26,000 lbs [subsection (g)]. Under subsection (f), with certain exceptions, subject vehicles with a GVWR of 26,000 lbs or less must, starting January 1, 2015, be equipped with a "2010 model year emissions equivalent engine" pursuant to the schedule shown in table 1. School buses, that otherwise would be subject to subsection (f), are subject to a different set of requirements in subsection (k). Under subsection (k), with certain exceptions, all schools buses must comply with PM BACT by 2014.

Table 1 - Compliance Schedule under Section 2025(f) by Engine Model Year for Lighter Heavy-Duty Trucks

Existing Engine Model Year	Compliance Date as of January 1	Requirement
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Existing Engine Model Year	Compliance Date as of January 1	Requirement
1995 and older	2015	2010 model year emission equivalent
1996	2016	
1997	2017	
1998	2018	
1999	2019	
2003 and older	2020	
2004-2006	2021	
All engines	2023	

Under subsection (g), with certain exceptions, subject vehicles with a GVWR more than 26,000 lbs must, starting January 1, 2012, meet the PM Best Available Control Technology (BACT) requirement and must upgrade to a 2010 MY emissions equivalent engine pursuant to the schedule shown in table 2. Fleets with vehicles otherwise subject to subsection (g) may opt for a different phase-in compliance schedule for PM BACT but must comply with section 2025(g) by 2023. See 13 CCR section 2025, subsections (h) ("Small Fleet Compliance Option") and (i) ("Phase-in Option").

**Table 2 - Compliance Schedule under Section 2025(g) by
Engine Model Year for Heavier Heavy-Duty Trucks**

Engine Model Year	Compliance Date Install PM Filter by January 1	Compliance Date 2010 Engine by January 1
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Engine Model Year	Compliance Date Install PM Filter by January 1	Compliance Date 2010 Engine by January 1
1993 and older	No Requirement	2015
1994-1995	No Requirement	2016
1996-1999	2012	2020
2000-2004	2013	2021
2005-2006	2014	2022
2007 or newer	2014 if not OEM equipped	2023

Section 2025(j) allows credits for early PM retrofits, fleets that have downsized, early addition of newer vehicles, hybrid vehicles, alternative fueled vehicles and vehicles with heavy-duty pilot ignition engines that can allow delayed requirements for other heavier trucks in the fleet. Fleet owners are required to meet the reporting and record keeping requirements of subsections (r) and (s). Credits are not transferrable except with appropriate documentation of a change of business form approved by the CARB Executive Officer (EO).

Subsection (l) of the Truck and Bus Regulation provides requirements for drayage trucks and utility vehicles. Drayage trucks subject to the Drayage Truck Regulation may be included in the fleet to comply with the requirements of the Truck and Bus Regulation only if all drayage trucks are included. Starting January 1, 2023, all drayage truck owners must comply with the requirements of the Truck and Bus Regulation.

Other provisions in the Truck and Bus Regulation include

certain requirements and exemptions for agricultural fleets [13 CCR 2025(m)]; requirements for single-engine and two-engine sweepers [13 CCR 2025(n)]; requirements for a new fleet and changes in an existing fleet [13 CCR 2025(o)]; certain exemptions, delays, and extensions [13 CCR 2025(p)]; special provisions for VDECS and experimental diesel emission control strategies [13 CCR 2025(q)]; detailed reporting requirements [13 CCR 2025(r)]; recordkeeping requirements [13 CCR 2025(s)]; provisions for auditing of records [13 CCR section 2025(t)]; provisions for record retention [13 CCR 2025(u)]; provisions establishing CARB's right of entry [13 CCR 2025(v)]; provisions requiring disclosures by sellers [13 CCR 2025(w)]; compliance requirements [13 CCR 2025(x)]; provisions for CARB issuance of certificates of reported compliance [13 CCR 2025(y)]; and penalties for non-compliance [13 CCR section 2025(z)]. The reader is directed to the proposed rule (page 40654-40656) for additional information on the content of the Truck and Bus Regulation.

Drayage Truck Regulation

CARB's Drayage Truck Regulation (13 CCR section 2027) applies to owners and operators of certain in-use, on-road, diesel-fueled, heavy-duty drayage vehicles with a GVWR greater than 26,000 pounds defined as "drayage trucks." Drayage trucks are those that are used for transporting cargo, such as

containerized, bulk, or break-bulk goods and that operate on or transgress through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, including transporting empty containers and chassis; or that operate off port or intermodal railyard property transporting cargo or empty containers or chassis that originated from or is destined to a port or intermodal rail yard property. The regulation also applies to owners and operators of motor carriers that dispatch drayage trucks that operate in California, marine or port terminals, intermodal rail yards, and rail yard and port authorities. Owners and operators are subject to the Drayage Truck Regulation through December 31, 2022. Starting January 1, 2023, drayage trucks will be subject to the Truck and Bus Regulation.

As described in our July 11, 2011 proposed rule, section 2027(d) of the Drayage Truck Regulation establishes the requirements and compliance deadlines, grouped into two phases, for drayage trucks. Phase 1 of the regulation [section 2027(d)(1)] required, by December 31, 2009, all drayage trucks with a GVWR greater than 33,000 pounds to be equipped with a 1994-2003 MY engine certified to California or federal emission standards and a level 3 VDECS for PM emissions; or a 2004 or newer MY engine certified to California or federal emission standards. Drayage trucks with GVWR greater than 33,000 pounds

but with 2004-2006 MY engines are allowed extra time to be equipped with a level 3 VDECS (by January 1, 2012 for subject vehicles with MY 2004 engines and by January 1, 2013 for vehicles with MY 2005-2006 engines). Under Phase 1, by January 1, 2012, all drayage trucks with a GVWR of 26,001 lbs to 33,000 pounds must be equipped with a level 3 VDECS for PM emissions while operating in the South Coast Air Basin. Phase 2 [section 2027(d)(2)] requires that, beginning on January 1, 2014, all drayage trucks must be equipped with a 1994 or newer MY engine that meets or exceeds 2007 MY California or federal emissions standards.

Drayage truck owners must register with the CARB Drayage Truck Registry, a database that contains information on all trucks that conduct business at California ports and intermodal rail yards. See section 2027(e). The Drayage Truck Regulation provides for the same types of penalties for non-compliance as described above for the Truck and Bus Regulation. See section 2027(g). Sections 2027(h) ("Right of Entry") and 2027(i) ("Enforcement") authorize and support efforts by CARB and other officials to ensure compliance with the regulation. Section 2023(j) is a sunset clause that provides that, starting January 1, 2023, drayage trucks would no longer be subject to the provisions of the Drayage Truck Regulation but rather would be subject to the provisions of the Truck and Bus Regulation in

13 CCR section 2025. The reader is directed to the July 11, 2011 proposed rule (page 40656) for additional information on the content of the Drayage Truck Regulation.

Summary of EPA's Evaluation of the Regulations in Proposed Rule

In our July 11, 2011 proposed rule, we described the basis for our evaluation of the two regulations. Specifically, we noted that SIPs must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act [see CAA section 110(a)(2)(A)]; must provide necessary assurances that the State will have adequate personnel, funding, and authority under State law to carry out such SIP (and is not prohibited by any provision of Federal to State law from carrying out such SIP) [see CAA section 110(a)(2)(E)]; must be adopted by a State after reasonable notice and public hearing [see CAA section 110(l)], and must not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the Act [see CAA section 110(l)].³

In our July 11, 2011 proposed rule, we proposed approval of the Truck and Bus Regulation and Drayage Truck Regulation based

³ CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to insure equivalent or greater emission reductions of such air pollutants, does not apply to the Truck and Bus Regulation or the Drayage Truck Regulation because they do not constitute pre-1990 SIP control requirements.

on our conclusion that the regulation would meet the applicable procedural and substantive requirements of the Clean Air Act for SIPs and SIP revisions described in the previous paragraph. The following paragraphs summarize our findings in this regard from our proposed rule.

First, with respect to the procedural requirements of CAA section 110(l), we noted the extensive public process that CARB conducted prior to the adoption of the original versions of the Truck and Bus Regulation in December 2008 and the Drayage Truck Regulation in December 2007 and the extensive public process that CARB conducted for the recent amendments to the two regulations. We anticipated that we would conclude that CARB had met the applicable procedural requirements for SIP revisions upon submittal by CARB of the final adopted regulations as a SIP revision with the necessary public process documentation.

On September 21, 2011, CARB submitted the final adopted versions of the Truck and Bus Regulation and the Drayage Truck Regulation to EPA as a revision to the California SIP, and on December 9 and 15, 2011, CARB supplemented the September 21, 2011 submittal with evidence of approval of the regulations by the California Office of Administrative Law. CARB's September 21, 2011 submittal, as supplemented on December 9 and 15, 2011, includes the documentation of the adoption and public process for the amendments to the two regulations that we had

anticipated in our July 11, 2011 proposed rule. Thus, we conclude that CARB has met the procedural requirements under CAA section 110(1) for reasonable public notice and hearing prior to adoption of SIPs and SIP revisions.

Second, in our July 11, 2011 proposed rule, we described the general and specific authority granted to CARB under the California Health and Safety Code (H&SC) to adopt and implement the two regulations.

Third, in our July 11, 2011 proposed rule, we evaluated the enforceability of both regulations with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting,⁴ and concluded that the two regulations would be enforceable for the purposes of CAA section 110(a)(2) for the following reasons:

- The regulations would be sufficiently clear as to which persons and which vehicles or engines are affected by the regulations;
- The regulations would be sufficiently specific so that the persons affected by the regulations would be fairly on notice as to what the requirements and related compliance dates are;

⁴ These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, *et al.*, titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," dated September 23, 1987.

- The sunset clause in the Drayage Truck Regulation would be acceptable because it merely transfers CARB's regulatory authority over drayage trucks from the Drayage Truck Regulation to the Truck and Bus Regulation;
- The "director's discretion" provisions in the two regulations would be sufficiently limited in scope and application; and
- The regulations would require use of appropriate test methods and would include adequate recordkeeping and reporting requirements sufficient to ensure compliance with the applicable requirements.

Fourth, in our July 11, 2011 proposed rule, we noted that the State's 2007 State Strategy to attain the 1997 PM_{2.5} and ozone NAAQS in areas like the South Coast Air Basin and the San Joaquin Valley are relying on the Truck and Bus Regulation and Drayage Truck Regulation, among other CARB regulations, to help achieve needed emissions reductions and thereby meet the aggregated State emissions reduction commitments made by CARB in connection with the regional air quality plans. As such, we concluded that the Truck and Bus Regulation and the Drayage Truck Regulation would not interfere with RFP, attainment or any other applicable requirement of the Act in accordance with CAA section 110(1).

Based on the evaluation summarized above, we concluded in

our July 11, 2011 proposal that the Truck and Bus Regulation and the Drayage Truck Regulation would be consistent with the relevant CAA requirements, policies and guidance. The reader is directed to our July 11, 2011 proposed rule (pages 40657-40659) for a more detailed discussion of our evaluation of the Truck and Bus Regulation and Drayage Truck Regulation.

Lastly, we indicated in our July 11, 2011 proposed rule that if the State substantially revises the version of the Truck and Bus Regulation or the Drayage Truck Regulation that was released for public comment by the State and that was submitted for "parallel processing," this would result in the need for additional proposed rulemaking on the regulations by EPA. On September 21, 2011, CARB submitted the final versions of the Truck and Bus Regulation and Drayage Truck Regulation, which were adopted by the CARB Executive Officer on September 19, 2011, to EPA as a revision to the California SIP.

The two final adopted regulations essentially mirror the versions of the regulations that had been released for public comment and that had been submitted to EPA for parallel processing, and on which EPA had based the Agency's proposed approval. Because the two final adopted regulations are essentially the same as the versions of the rules on which the proposed approval was based, we can rely on our evaluation of the proposed versions of the Truck and Bus Regulation and

Drayage Truck Regulation, as set forth in our July 11, 2011 proposed rule and summarized above, in taking today's final action to approve the final adopted versions of the regulations.

Under California law, once adopted, a regulation must still be approved by the California Office of Administrative Law (OAL) to take effect. CARB's Truck and Bus Regulation and Drayage Truck Regulation, as amended, were approved by OAL on December 14, 2011 and November 9, 2011, respectively, and became effective under State law on the same days as their OAL approvals. On December 9, 2011 and December 15, 2011, CARB submitted evidence of approval of the final, adopted Drayage Truck Regulation and Truck and Bus Regulation, respectively, by the California OAL to EPA as supplements to CARB's September 21, 2011 SIP revision, and therefore, CARB has now provided EPA with all of the documentation necessary for EPA to take this final action on the two subject regulations.

II. Public Comments and EPA Responses

Our July 11, 2011 proposed rule provided a 30-day comment period. During this period, we did not receive any comments on our proposed action on CARB's Truck and Bus Regulation. However, we received three comment letters in connection with our proposed action on CARB's Drayage Truck Regulation. The comments and our responses are provided below.

Individual Trucking Company: An Individual Trucking Company

requests that EPA prevent Phase 2 of CARB's Drayage Truck Regulation from being implemented on the schedule set forth in the regulation due to social and economic impacts that the Individual Trucking Company believes will result, in part due to the absence of a CARB-verified filter available to allow truck owners and operators to comply with Phase 2 requirements. The Individual Trucking Company notes that development of such a filter is unlikely now that the schedule for Phase 2 compliance by non-drayage trucks has been extended to dates later than for drayage trucks.

EPA Response: Under Phase 2 of CARB's Drayage Truck Regulation, beginning January 1, 2014, all drayage trucks must be equipped with a 1994 or newer model year engine that meets or exceeds 2007 MY California or federal emission standards. See 13 CCR 2027(d)(2). In our July 11, 2011 proposed rule, we evaluated the Drayage Truck Regulation against the procedural and substantive requirements of the CAA for SIPs and SIP revisions and determined that the regulation meet all of the applicable requirements. See pages 40657-40659 of the proposed rule.

Under the CAA, EPA is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal requirements. See section 110(k) of the CAA and 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of

the Clean Air Act. The above comments from the Individual Trucking Company do not challenge EPA's conclusion that the Drayage Truck Regulation meets all applicable CAA requirements but rather contend, for various reasons, that Phase 2 of CARB's Drayage Truck Regulation is too costly and may not be economically or technologically feasible. However, such considerations cannot form the basis for EPA disapproval of a rule submitted by a state as part of a SIP [see *Union Electric Company v. EPA*; 427 U.S. 246, 265 (1976)]. Moreover, EPA disapproval of CARB's regulation would not prevent the implementation of Phase 2 because the Phase 2 requirements would still apply, and would still be enforceable, under State law, regardless of EPA's action to approve or disapprove the regulation as a revision to the California SIP.

Anonymous Oakland Trucker: The Oakland trucker objects to CARB's decision not to delay Phase 2 of the Drayage Truck Regulation consistent with the delay adopted for non-drayage truckers under the Truck and Bus Regulation and contends that, due to the lack of a filter to allow 2004-2006 MY trucks to remain compliant with the regulation through 2020, certain social and economic consequences will result.

EPA Response: As explained above in our response to the Individual Trucking Company, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the

criteria of the Clean Air Act, and that objections to a State rule grounded in economic or technological feasibility cannot form the basis for EPA disapproval of the rule submitted by a state as part of a SIP.

West State Alliance: West State Alliance (WSA), an association of truckers and ancillary goods movement industries servicing the Port of Oakland, generally requests that EPA disapprove the Drayage Truck Regulation as a revision of the California SIP based on the contents of seven documents attached to their general comment requesting disapproval. The seven documents include the following:

- A letter from WSA to CARB, dated December 28, 2010, objecting to CARB's December 17, 2010 decision not to delay the Phase 2 requirements under the Drayage Truck Regulation.
- A letter from Horizon Freight System, Inc. to CARB, dated December 29, 2010, objecting to CARB's December 17, 2010 decision not to delay the Phase 2 requirements under the Drayage Truck Regulation.
- A letter from Diesel Emissions Service to WSA, dated December 29, 2010, discussing the lack of an available EPA- or CARB-verified retrofit system that would allow the operator of a 1994-2006 model year engine to meet the requirements of Phase 2 of CARB's Drayage Truck Regulation.
- An undated letter from an Oakland City Councilmember to CARB

objecting to CARB's failure to extend the Phase 2 compliance dates in the Drayage Truck Regulation consistent with the compliance date extensions adopted by CARB in the Truck and Bus Regulation.

- An undated WSA fact sheet concerning CARB's Drayage Truck Regulation that was circulated after CARB's December 17, 2010 decision not to delay the Phase 2 requirements under the Drayage Truck Regulation.
- A WSA request to CARB submitted May 16, 2011 requesting that CARB reconsider the Proposed Amendments to the Drayage Truck Regulation of October 2010 that would have aligned scheduled upgrades for drayage trucks with other diesel trucks under CARB's Truck and Bus Regulation.
- A letter to CARB dated August 3, 2011 from an attorney retained by WSA concerning the costs of implementation of Phase 2 of CARB's Drayage Truck Regulation as well as CARB's purported failure to prepare a study on the economic impacts on business under California Government Code 11346, et seq., in connection with CARB's decision not to delay implementation of Phase 2 of the Drayage Truck Regulation.

EPA Response: EPA has reviewed the seven documents and finds that, with one exception, the comments contained therein object to the compliance date for Phase 2 requirements under CARB's Drayage Truck Regulation based on purported economic or

technological infeasibility, unfairness relative to non-drayage truckers, and unavailability of funding, and that the comments also denounce the purported adverse social impacts that will result, particularly to the West Oakland community. However, as discussed above in responses to comments from the Individual Trucking Company and the Anonymous Oakland Trucker, such considerations cannot form the basis for EPA disapproval of the rule submitted by a state as part of a SIP.

The one specific comment that does relate to EPA's action is directed to CARB, rather than EPA, but it challenges CARB's decision not to extend Phase 2 compliance dates on state law grounds. SIP rules must be adopted by states in compliance with their own laws because a state must provide necessary assurances that it has adequate legal authority to carry out the SIP revision and, where a state has not followed its own laws in adopting a rule subsequently submitted as a SIP revision, such assurances generally cannot be provided. See CAA section 110(a)(2)(E).

In this instance, the commenter accuses CARB of failing to follow the mandates of state law proscribed by California Government Code section 11346, *et seq.*, which generally establishes procedures for state departments and agencies for adoption, amendment, or repeal of administrative regulations. Among the requirements are the duty to assess the potential for

adverse economic impact on California businesses and individuals and to identify and evaluate alternatives that are less burdensome but equally effective. See Cal. Government Code §11346.2 and 11346.3. However, we note that CARB specifically addressed the issue of adverse economic impacts related to CARB's decision not to extend Phase 2 compliance dates under the Drayage Truck Regulation in CARB's Final Statement of Reasons for Rulemaking (for the Drayage Truck Regulation) ("FSOR"), which was submitted by CARB in its SIP submittal dated September 21, 2011. In the FSOR, CARB explains that CARB staff performed the required economic analysis of the impacts to drayage businesses for compliance with the Phase 2 requirements as part of the rulemaking decision in 2007, and that no new economic analysis is required for CARB's decision to retain those requirements. See CARB's FSOR, page 46. We find that CARB's response adequately addresses this issue and provides us with the necessary assurances that CARB has complied with state law in adopting the Drayage Truck Regulation and will be able to carry out this SIP revision.

III. Final Action

No comments were submitted that change our assessment that the Truck and Bus Regulation and Drayage Truck Regulation comply with the relevant CAA requirements. Therefore, pursuant to section 110(k)(3) of the CAA and for the reasons given above and

in our July 11, 2011 proposed rule, EPA is taking final action to approve the Truck and Bus Regulation and Drayage Truck Regulation into the California SIP. The specific rules approved into the SIP in today's action are:

- 13 CCR section 2025 ("Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles"), as adopted by the CARB Executive Officer on September 19, 2011, submitted on September 21, 2011, and made effective under State law on December 14, 2011; and
- 13 CCR section 2027 ("In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks"), as adopted by the CARB Executive Officer on September 19, 2011, submitted on September 21, 2011, and made effective under State law on November 9, 2011.

Final approval of the regulations and incorporation of them into the California SIP makes them federally enforceable.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register.

A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Ozone, Particulate matter, Reporting and
recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

January 26, 2012
Dated:

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraphs (c)(409) and (c)(410) to read as follows:

§52.220 Identification of plan.

* * * * *

(c) * * *

(409) New regulation was submitted on December 9, 2011, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(1) State of California Office of Administrative Law, "Notice of Approval of Regulatory Action," Title 13, California Code of Regulations (CCR), section 2027, effective on November 9, 2011.

(2) Final Regulation Order, 13 CCR section 2027 ("In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks").

(410) New regulation was submitted on December 15, 2011, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(1) State of California Office of Administrative Law, "Notice of Approval of Regulatory Action," Title 13, California Code of Regulations (CCR), section 2025, effective on December 14, 2011.

(2) Final Regulation Order, 13 CCR section 2025 ("Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles").